

## **EXHIBIT H**

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11  
12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**  
14

15 L.G. PHILIPS LCD CO., LTD.,  
16 Plaintiff,  
17 v.  
18 TATUNG COMPANY; TATUNG  
COMPANY OF AMERICA, INC.; AND  
19 VIEWSONIC CORPORATION,  
20 Defendants.

Case No. \_\_\_\_\_  
DEFENDANTS TATUNG COMPANY  
AND TATUNG COMPANY OF  
AMERICA, INC.'S MEMORANDUM OF  
POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR A  
PROTECTIVE ORDER LIMITING  
SCOPE OF THIRD PARTY  
DEPOSITION AND SUBPOENA  
  
DATE:  
TIME:  
DEPT.:

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1 **I. INTRODUCTION**

2 Defendants Tatung Company and Tatung Company of America (collectively, "the Tatung  
3 Defendants") submit this Memorandum of Points and Authorities in support of their Motion for  
4 Protective Order Limiting Scope of Third Party Deposition and Subpoena (the "Motion for  
5 Protective Order").

6 This Motion for Protective Order seeks to limit the scope of a subpoena and deposition  
7 notice issued on third-party **American Dynamics** out of this district in connection with a patent  
8 infringement lawsuit pending in the United States District Court for the District of Delaware (the  
9 "Delaware Action," C.A. No. 04-343-JJF). Controversies regarding depositions of nonparties are  
10 decided in the court which issued the subpoena (where the deposition is being taken), unless the  
11 nonparty consents to determination elsewhere. *Fincher v. Keller Industries, Inc.*, 129 FRD 123,  
12 125 (MD NC 1990); Cal. Prac. Guide Fed. Civ. Pro. Before Trial Ch. 11(IV)-F, 11:2289.

13 The subpoena at issue is attached as Exhibit 1 hereto and made a part hereof. Defendants  
14 submit that any third-party discovery should be limited to the accused products. *See* Declaration  
15 of Charlene Oh at ¶3. For the reasons discussed in greater detail below, the Tatung Defendants'  
16 request for a protective order should be granted because the discovery sought by Plaintiff L.G.  
17 Philips LCD Co., Ltd. ("LPL") is:

18 1. A transparent and improper effort by LPL to perform an "end run" around a  
19 potentially unfavorable ruling by the Special Master in the Delaware Action concerning the  
20 proper scope of LPL's discovery, namely, the Special Master's impending ruling on LPL's  
21 motion to compel discovery pertaining to *unaccused* products from the Tatung Defendants and  
22 the Tatung Defendants' motion to stay discovery regarding *unaccused* products pending  
23 resolution of issues relating to LPL's and its attorneys' violations of Protective Orders in cases  
24 pending between the parties;

25 2. Irrelevant in that it seeks extremely broad categories of communications and  
26 information from the Tatung Defendants' customers entirely unrelated to the patents-in-suit or  
27 the accused products in the Delaware Action;

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1           3.     Not reasonably calculated to lead to the discovery of admissible evidence in the  
2 Delaware Action, but instead, is information about the Tatung Defendants' confidential business  
3 communications and trade secret information that LPL seeks for ulterior and improper purposes;  
4 and

5           4.     Unduly burdensome in that the third-party discovery Plaintiff seeks from  
6 American Dynamics and the Tatung Defendants' other customers will require the production of  
7 thousands of documents and is calculated to harass the Tatung Defendants' customers, some of  
8 whom have already responded to subpoenas issued by LPL during jurisdictional discovery.

9 **II.     FRCP 26(C) CERTIFICATE OF COMPLIANCE**

10           Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, counsel for Defendants  
11 Tatung Company and Tatung Company of America, Inc. certify that they conferred in good faith  
12 with counsel for Plaintiff L.G. Philips LCD Co., Ltd. to resolve this dispute prior to filing this  
13 motion and were unsuccessful.

14 **III.    STATEMENT OF FACTS**

15 **A.     The Nature Of This Lawsuit.**

16           Defendant Tatung sells electronic products including computer monitors and televisions  
17 to resellers and retailers worldwide. Defendant Tatung Company of America, a California  
18 corporation, is a reseller of computer monitors and other LCD applications in the United States.  
19 The Tatung Defendants also perform OEM (Original Equipment Manufacturer) services for a  
20 number of customers. LPL and its parent company, LG Electronics, Inc. ("LGE"), compete with  
21 the Tatung Defendants in the market of flat display panel products (e.g., LCD monitors, LCD  
22 televisions and plasma televisions).

23           Third-party American Dynamics, the recipient of LPL's subpoena and deposition notice,  
24 is located in San Diego, California and is a customer of the Tatung Defendants.

25           The Tatung Defendants integrate more than 800 models of computer monitors and flat  
26 panel display products, referred to collectively as "visual display products." As OEMs, many of  
27 the Tatung Defendants' products are branded and otherwise customer specific; in most instances,  
28 the products are made to exacting customer specifications. Because the monitor business is

1 highly competitive, the particular product design requirements and specifications of the Tatung  
2 Defendants' OEM customers, including those of American Dynamics, are extremely valuable  
3 trade secrets. The Tatung Defendants' specific pricing arrangements with customers also are  
4 extremely valuable trade secrets.

5 LPL commenced the Delaware Action against the Tatung Defendants on May 27, 2004.  
6 In the Delaware Action, LPL has alleged patent infringement claims against the Tatung  
7 Defendants based on certain "rear-mount" patents with respect to 20 of its products.

8 The discovery cut-off date in the Delaware Action is March 30, 2007.

9 **B. The Tatung Defendants Have Already Provided LPL With**  
10 **Voluminous Discovery Relating to Both Its Accused and Non-Accused**  
11 **Products.**

12 LPL served its initial discovery requests in the Delaware Action over two years ago. In  
13 response to those discovery requests, the Tatung Defendants produced technical specifications  
14 and assembly drawings covering approximately 800 models of monitors and flat panel displays  
15 they sell. Until November 2006, LPL had accused only one Tatung product of infringing the  
16 patents-in-suit. In November 2006, LPL identified two additional accused products. It was not  
17 until mid-January 2007 that LPL accused the remaining products.

18 The Tatung Defendants have expended a great deal of effort to comply with their  
19 discovery obligations. Since late January 2007 alone, the Tatung Defendants have produced  
20 approximately 15,000 pages of documents, including the following:

- 21 • Highly confidential Tatung America product work instructions;
- 22 • Highly confidential exploded view drawings of products; and
- 23 • Highly confidential sales summaries from 2002 to the present  
24 (quarter 1, 2007) containing model, price, and quantity information  
25 for *all* of its visual display products.

26 In addition, the Tatung Defendants have made available for LPL's inspection, and LPL  
27 has examined, disassembled, and photographed more than 40 monitor and television products.  
28 Of the hundreds of products for which LPL has been provided technical documents, LPL to date



1 has accused only 20 products of infringing the patents-in-suit.

2 **C. LPL's Motion To Compel Further Customer Information Is Pending**  
3 **Before the Special Master.**

4 In January 2007, LPL filed a motion to compel the production of additional documents  
5 such as highly confidential agreements and communications between the Tatung Defendants and  
6 their customers relating to *all* of the Tatung Defendants' visual display products including the  
7 hundreds of unaccused products. The Tatung Defendants vigorously opposed that motion on the  
8 grounds that LPL's requested discovery is not limited in any way to the accused products at issue  
9 in the Delaware Action and is instead a transparent attempt by LPL to obtain highly sensitive  
10 business information. That motion is presently pending before the Special Master. The parties  
11 expect a decision shortly, as discovery cut-off is March 30, 2007.

12 **D. LPL Now Seeks the Same Discovery Directly From the Tatung**  
13 **Defendants' Customers.**

14 In what can only be characterized as a blatant attempt to circumvent a potentially  
15 unfavorable ruling by the Special Master on a motion LPL itself filed, LPL recently served  
16 American Dynamics, as well as two dozen other customers of the Tatung Defendants, with a  
17 subpoena and deposition notice seeking voluminous discovery about highly confidential  
18 customer information on hundreds of products that LPL has *never accused of infringement*.

19 Specifically, LPL's request for documents seeks, *inter alia*, "all documents" including but  
20 not limited to writings, accounting records, agreements, communications, correspondence, faxes,  
21 summaries of records or telephone conversations, minutes or records of meetings or conferences,  
22 lists of persons attending meetings or conferences, drafts of any documents, working papers, and  
23 documents between the Tatung Defendants and American Dynamics concerning such subject  
24 matter area as (a) marketing, sales, business documents or presentation materials provided by the  
25 Tatung Defendants, (b) technical specifications and/or assembly drawings regarding the Tatung  
26 Defendants' "visual display products," (c) American Dynamics' design requirements for its  
27 "visual display products," (d) American Dynamics' market for its "visual display products," (e)  
28 the business relationship between American Dynamics and the Tatung Defendants since January

1 1, 2002, (f) the manufacture and/or assembly of the Tatung Defendants' "visual display  
2 products," and more.

3 These extensive and broad-reaching requests for "visual display products" encompass *all*  
4 of the products the Tatung Defendants sell to American Dynamics and not just the accused  
5 products that are the subject of the Delaware Action. To date, LPL has failed to provide any  
6 legitimate explanation why information on *unaccused* products is relevant to its patent  
7 infringement claims in the Delaware Action.

### 8 **III. LEGAL ARGUMENT**

#### 9 **A. The Tatung Defendants Have Standing Under FRCP 26(c) To Move For A** 10 **Protective Order.**

11 Rule 26(c) of the Federal Rules of Civil Procedure ("FRCP") provides that "[u]pon  
12 motion *by a party* or by the person from whom discovery is sought, accompanied by a  
13 certification that the movant has in good faith conferred...and for good cause shown... the court  
14 in the district where the deposition is to be taken may make any order which justice requires to  
15 protect a party or person..." (emphasis added). Courts in the Ninth Circuit have recognized that  
16 this language gives parties to a lawsuit, as well as third-parties themselves, standing to challenge  
17 third-party subpoenas. *See Portland Gen. Elec. Co. v. U.S. Bank Trust Nat'l Assoc.*, 38 F. Supp.  
18 2d 1202, 1206 n. 3 (D. Or. 1999), *rev'd on other grounds*, 218 F.3d 1085 (9th Cir. 2000) (noting  
19 that FRCP 26(c) "expressly gives" a party standing to challenge third party subpoenas); *see also*,  
20 *In re Ashworth, Inc. Securities Litigation*, 2002 WL 33009225 at \* 1 (S.D. Cal. 2002) (finding  
21 that under FRCP 26, defendants have standing to seek a protective order in connection with a  
22 third party subpoena); *Springbook Lenders v. Northwestern Nat'l Ins. Co.*, 121 F.R.D. 679, 680  
23 (N.D. Cal. 1988) (citing FRCP 26(c) for the proposition that "[Defendant] does have standing to  
24 object to [Plaintiff's] subpoena of a third party").

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1 In meet and confer discussions, LPL has asserted that the Tatung Defendants do not have  
 2 standing to object to the information sought from third parties.<sup>1</sup> LPL is mistaken and references  
 3 inapposite authority.

4 Based on the above, the Tatung Defendants, as parties to the Delaware Action, clearly  
 5 have standing to seek a protective order against LPL's attempts to obtain extremely broad and  
 6 irrelevant discovery from third-parties.

7 **B. Good Cause Supports The Issuance of A Protective Order.**

8 **1. Legal Standard Governing The Issuance Of Protective Orders.**

9 Pursuant to Federal Rule of Civil Procedure 26(c), "upon a showing of good cause," the  
 10 Court may issue a protective order precluding or limiting the scope of discovery in order to  
 11 protect a party from annoyance, embarrassment, oppression, or undue burden or expense. *See,*  
 12 *e.g., Murata Mfg. Co., Ltd. v. Bel Fuse, Inc.*, 234 F.R.D. 175, 178 (N.D. Ill. 2006); *see also,*  
 13 *Pulsecard, Inc. v. Discover Card Services, Inc.*, 1995 WL 526533 at \*14 (D. Kan. 1995). The  
 14 protective order may include limiting the scope of discovery to certain matters, precluding  
 15 altogether the discovery of certain matters, and ordering that a trade secret or other confidential  
 16 research, development, or commercial information not be revealed. Fed. R. Civ. Proc. 26(c)(4),  
 17 26(c)(7).

18  
 19  
 20 <sup>1</sup> For example, LPL will likely cite *Dart Industries, Inc. v. Liquid Nitrogen Processing* for the proposition  
 21 that "unless a party to an action can make claim to some personal right or privilege in respect to the subject matter of  
 22 a subpoena duces tecum directed to a nonparty witness, the party to the action has no right to relief under FRCP  
 45(b) or 30(b)." 50 F.R.D. 286, 291 (D. Del. 1970), *quoting* *Shepherd v. Castle*, 20 F.R.D. 184, 188 (W.D. Mo.  
 1957).

23 *Dart Industries* is inapposite for two reasons. First, that case involved a party's motion to *quash a third*  
 24 *party subpoena under FRCP 45(b)*; here, the Tatung Defendants move for a *protective order pursuant to FRCP*  
 25 *26(c)*, which expressly grants parties standing to move the court to limit the scope of, or altogether preclude certain  
 26 issues from, third party discovery.<sup>1</sup> FRCP 26(c)(4), 26(c)(7). The Tatung Defendants have chosen not to quash  
 27 under FRCP 45(b) because they agree that LPL may seek *relevant and appropriate* discovery from third parties;  
 28 FRCP 26(c) is the more appropriate mechanism to strike a balance between allowing open discovery and ensuring  
 that such discovery is fairly tailored to the accused products.

26 Second, unlike the Tatung Defendants, the moving party in *Dart Industries* did not assert any personal  
 27 privilege with respect to the requested documents. 50 F.R.D. at 291. In fact, the court expressly "decline[d] to hold  
 28 that Dart lacks standing to move to quash the subpoena duces tecum on the grounds stated in FRCP 45(b)," averring  
 that Dart's interest "*may be sufficient to give it standing to move to limit the production sought here.*" *Id.*, emphasis  
 added.

1 In the context of Federal Rule of Civil Procedure 26(c)(7) specifically, "good cause"  
 2 requires the party seeking the protective order to demonstrate that: (1) the material sought to be  
 3 protected is confidential, and (2) disclosure will create a competitive advantage for the party.  
 4 *Pulsecard*, 1995 WL 526533 at \* 16, citing *Georgia Television Co. v. TV News Clips of Atlanta*,  
 5 718 F. Supp. 939, 953 (N.D. Ga. 1989).

6 **2. The Requested Discovery Seeks Overly Broad Categories Of**  
 7 **Communications and Information Completely Unrelated To**  
 8 **Claims At Issue in The Delaware Action.**

9 A protective order is appropriate because LPL's third-party discovery requests are overly  
 10 broad and seek information that is not relevant to its claims, or the Tatung Defendants' defenses,  
 11 in the Delaware Action. Instead, LPL seeks to obtain, through the guise of "discovery," sensitive  
 12 and confidential information relating to the Tatung Defendant's business operations that would  
 13 help LPL gain a competitive advantage.

14 "[D]iscovery may not be had regarding a matter which is not 'relevant to the subject  
 15 matter involved in the pending action.'" *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318,  
 16 1323 (Fed. Cir. 1990). Moreover, "[e]ven if relevant, discovery is not permitted where no need  
 17 is shown, or compliance would be unduly burdensome, or where harm to the person outweighs  
 18 the need of the person seeking discovery of the information." *Id.*; see also, *American Standard*,  
 19 *Inc. v. Pfizer Inc.*, 828 F.2d 734, 739-42 (Fed. Cir. 1987).

20 In this regard, the case of *Joy Technologies, Inc. v. Flakt, Inc.*, 772 F. Supp. 842 (D. Del.  
 21 1991) is instructive, and presents a nearly identical situation to that found here. In *Joy*  
 22 *Technologies*, the defendant sought a protective order preventing plaintiff from seeking  
 23 discovery from *any of the defendant's customers or potential customers* until plaintiff made a  
 24 showing that the information: (a) was necessary and relevant to the action, and (b) could not be  
 25 obtained from any other source. *Id.* at 845. The court granted the requested protective order,  
 26 stating:

1            “[I]t is undisputed that [plaintiff] and [defendant] are fierce  
2            competitors in the technology that is the subject of this lawsuit, and  
3            [plaintiff] has not convinced the Court that the same information it  
4            seeks from third parties is not available from [defendant].  
5            Therefore, unless [plaintiff] can demonstrate that it has a specific  
6            need for evidence available only from third party customers of  
7            [defendant], the Court concludes that [defendant] and its customers  
8            are entitled to protection.”

9            *Id.* at 849.

10           Similarly, in *Micro Motion, supra*, the plaintiff sought to obtain information from a  
11           nonparty competitor that was purportedly relevant to the issue of damages in the underlying  
12           patent suit. The court held that the plaintiff was embarking on a “fishing expedition” with its  
13           “merely speculative inquiries in the guise of relevant discovery.” 894 F.2d at 1327-28, *see also*  
14           *Visto Corp. v. Smartner Info. Systems, Ltd.*, 2007 WL 218771 at \* 5 (N.D. Cal. 2007) (granting  
15           protective order such that third party did not have to respond to the subpoena).

16           Here, LPL’s discovery requests to American Dynamics seek broad categories of  
17           documents and information concerning both accused and *unaccused* products that also are not  
18           limited as to time period. Such overly broad discovery requests encompass documents and  
19           information that, in reality, have nothing to do with the pending Delaware Action. Instead, it is  
20           readily apparent that LPL seeks to obtain such information about the Tatung Defendants to  
21           obtain a competitive advantage over them.

22           It also should be noted that the Tatung Defendants do not seek to prevent LPL from  
23           obtaining all third-party discovery being requested in its subpoena and deposition notice. Rather,  
24           such third-party discovery should focus on deposition topics and documents *pertaining to the*  
25           *accused products* at issue in the Delaware Action.

26           ///

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1                   **3. The Requested Third-Party Discovery Is Irrelevant To Any Purported**  
 2                   **Claim of Indirect Infringement.**

3           The Tatung Defendants anticipate that LPL will claim that it needs customer information  
 4 in order to determine indirect infringement. However, LPL has not shown why such information  
 5 is relevant to any such indirect infringement claim.

6           Determining whether a patent claim has been infringed involves a two step analysis.  
 7 First, the claim must be properly construed by the Court to determine its scope and meaning.  
 8 Second, the claim, as construed, must be compared to the accused device or process. *PC*  
 9 *Connector Solutions LLC v. Smartdisk Corp.*, 406 F.3d 1359, 1362 (Fed. Cir. 2005).  
 10 Infringement analysis therefore focuses on the products or processes and the claims of the  
 11 patents.

12           Here, the Tatung Defendants have already produced technical documents that depict their  
 13 products' components, as well as the assembly methods used. LPL is *already in possession* of all  
 14 the technical information it needs to compare Tatung's products to the asserted claims. There is  
 15 no need to directly subpoena and depose the Tatung Defendants' customers.

16           Moreover, there can be no indirect infringement without direct infringement and an  
 17 infringing product. "In order to succeed on a claim of inducement, the patentee must show, first  
 18 that there has been direct infringement, ... and second that the alleged infringer knowingly  
 19 induced infringement and possessed specific intent to encourage another's infringement."  
 20 *Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1304 (Fed. Cir. 2002).

21           Here, there is no allegation of direct infringement with respect to the hundred of products  
 22 for which LPL seeks thousands of documents from third parties. LPL is therefore not entitled to  
 23 the broad categories of documents it seeks from American Dynamics.

24                   **4. The Requested Discovery Seeks Confidential Business Information To**  
 25                   **Which LPL Would Not Otherwise Be Entitled.**

26           A protective order also is appropriate because LPL's subpoena and deposition notice  
 27 seeks disclosure of confidential, proprietary trade secret information belonging to the Tatung  
 28 Defendants. Such confidential commercial information warrants special protection under Rule



1 26(c)(7). *Micro Motion*, 894 F.2d at 1323, citing *Smith & Wesson v. United States*, 782 F.2d  
 2 1074, 1082 (1st Cir. 1986).

3 The Tatung Defendants and LPL are active competitors in the computer monitor  
 4 business. Declaration of Jackson Chang ("Chang Decl.") at ¶ 2. Producing the information and  
 5 testimony LPL seeks would cause major competitive harm to the Tatung Defendants. Chang  
 6 Decl. at ¶ 3. As just one example, LPL designates as a deposition topic: "The nature of the  
 7 business relationship and transactions between American Dynamics and [the Tatung Defendants]  
 8 relating to the sale, manufacture, assembly, distribution, or import of visual display products,  
 9 including but not limited to the agreements between American Dynamics [and the Tatung  
 10 Defendants]." These topics are closely guarded by the Tatung Defendants as highly sensitive  
 11 and confidential business information. *Id.* at ¶ 4. The Tatung Defendants' methods of  
 12 manufacturing its visual display products, for example, are not disclosed publicly; divulging this  
 13 information would likely result in competitors using the information to 1) undercut the Tatung  
 14 Defendants in pricing; 2) deduce the exact specifications required by existing customers; and/or  
 15 3) specifically target and lure away Tatung's existing customers. *Id.* at ¶ 7. All of this  
 16 information is kept secret by the Tatung Defendants. Only authorized personnel have access to  
 17 the information and information kept on computers are password protected. *Id.* at ¶ 6. The  
 18 product specifications and features required by each customer, including American Dynamics,  
 19 constitute competitive value and maintaining the confidentiality of such information is essential  
 20 to the fair conduct of this litigation.

21 **5. LPL's Discovery Is Unduly Burdensome And Is Intended to**  
 22 **Harass The Tatung Defendants' Customers.**

23 Ordering compliance with LPL's subpoena would pose an undue and unnecessary burden  
 24 and expense on non-party American Dynamics to gather and produce such information and  
 25 defend depositions in the requested time frame, particularly given the utter irrelevance of the  
 26 majority of requested documents and testimony.

27 ///

28 ///

1 The Tatung Defendants respectfully submit that LPL's discovery requests have been  
 2 interposed solely to harass American Dynamics and aggravate the business relationship between  
 3 the Tatung Defendants and their customers.

4 **C. The Need For a Protective Order Limiting Third Party Discovery Is Even**  
 5 **More Compelling Due To LPL's Violations Of Previous Protective Orders.**

6 LPL will likely argue that a Protective Order entered in the Delaware Action is sufficient  
 7 for discovery produced by third parties. The Tatung Defendants disagree on two grounds, both  
 8 of which are pending before the Special Master.

9 **1. LPL Has Violated Other Protective Orders On At Least Two**  
 10 **Occasions.**

11 The Tatung Defendants have recently petitioned the Special Master for relief regarding  
 12 LPL's multiple violations of protective orders issued in different cases, implicating different  
 13 patents, pending between the parties. LPL has *admitted* that its lawyers have viewed, used and  
 14 disclosed confidential materials produced in other litigation between the parties for purposes of  
 15 this case, which is expressly prohibited by the Protective Orders in the other litigation. The cases  
 16 include *LPL v. Tatung Company, et. al.*, Case No. 05-292-JJF in Delaware District Court and  
 17 *LPL v. Tatung Company, et. al.*, Case No. CV-02-6775-CBM in the Central District of  
 18 California. Such conduct flagrantly disregards the letter and spirit of the applicable protective  
 19 orders.

20 **2. LPL Is Potentially In Violation Of the Patent Prosecution Bar.**

21 Second, the PTO records appear to show that LPL staffs its litigation team with attorneys  
 22 who also prosecute patents in the area of flat panel display technology. The Tatung Defendants'  
 23 investigation of this conduct, which would directly violate the Protective Order, is ongoing, and  
 24 the issue has been raised with the Special Master.

25 For these reasons, the Tatung Defendants submit that the parties' current Protective Order  
 26 is insufficient to protect against the potential harm posed by disclosure of unlimited confidential

27 ///

28 ///



1 information by third parties, including American Dynamics. *See Pulsecard*, 1995 WL 526533 at  
2 \* 26 ("The court does not find that the entry of a prior protective order should necessarily bar a  
3 second one, if facts justify it").

4 **IV. CONCLUSION**

5 To be clear, the Tatung Defendants do not contest LPL's right to seek discovery from  
6 American Dynamics. They submit, however, that discovery obtained from third-parties must be  
7 *relevant* to this litigation and serve a legitimate purpose. Here, LPL's overly broad and improper  
8 requests do not serve such purposes. Accordingly, the Tatung Defendants respectfully request  
9 that the Court issue a protective order limiting discovery from American Dynamics to deposition  
10 testimony and documents relating to the accused products.

11  
12 Dated March 9, 2007

Respectfully submitted:

13  
14 By: 

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17 BROWN LAW GROUP

18 Attorneys for Tatung Company and  
19 Tatung Company of America, Inc.  
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## **EXHIBIT I**

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13  
14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 LG.PHILIPS LCD CO., LTD.,

18 Plaintiffs,

19 v.

20 TATUNG CO., et. al.,

21 Defendants.  
22  
23  
24  
25  
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27  
28

CASE NO. CV 07-1614-DDP(AJWx)  
(related to case Delaware U.S. District  
Court No. 1:04-cv-00343-JJF)

**PLAINTIFF LG.PHILIPS LCD CO.,  
LTD.'S OPPOSITION TO  
TATUNG'S MOTION FOR  
PROTECTIVE ORDER RE  
SUBPOENA SERVED ON CLI, INC.  
EMACHINES, INC., EDWARD  
SERVICE LLC, GATEWAY INC.  
AND INGRAM MICRO, INC.**

Magistrate: Andrew J. Wistrich  
Ctvm. 690 (Roybal Building)

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Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff LG.Philips LCD Co., Ltd. ("LPL") hereby opposes the Motions for Protective Order filed by Defendants Tatung Company and Tatung Company of America, Inc. (collectively "Tatung") with respect to the third party subpoenas served by LPL on CLI, Inc., EMachines, Inc., Edward Service LLC, Gateway Inc. and Ingram Micro, Inc. (An exemplar of the subpoena served on each of these third parties is attached hereto; *see* Ex. 1.) LPL requests that the Court exercise its discretion to transfer the instant Motions to the United States District Court for the District of Delaware. In the alternative, LPL requests that the Court deny the Motions and allow LPL to proceed with necessary and appropriate third party discovery.

This Motions for Protective Order have not been filed by the party who received the subpoena from LPL. Rather, Tatung, a defendant in the underlying case, in a blatant attempt to interfere with these and other proper subpoenas, has filed these motions in an effort to prevent third parties from producing what LPL knows will be extensive evidence against Tatung of both infringement and inducement to infringe the patents in the underlying suit. Further, Tatung's efforts are designed to prevent LPL from obtaining necessary third party discovery prior to the deadline of March 30, 2007. LPL has filed a motion with the Special Discovery Master in the underlying case seeking an order that prevents Tatung from taking such actions and also seeking an extension of third party discovery due to Tatung's improper conduct.

#### **I. STATEMENT OF FACTS**

This discovery dispute arises out of a patent infringement action pending in the United States District Court for the District of Delaware ("Main Case"). LPL is the owner of U.S. Patent No. 6,498,718 ("the '718 Patent") and U.S. Patent No. 6,501,641 ("the '641 Patent") (collectively, the "Patents-in-Suit"), which relate to mounting systems used in visual display products such as liquid crystal display ("LCD") computer monitors, laptop computers, and televisions. LPL has asserted

1 patent infringement claims against Tatung and ViewSonic Corporation  
 2 ("ViewSonic") (collectively, the "Defendants"). The Defendants manufacture  
 3 visual display products, which LPL alleges utilize LPL's patented techniques.  
 4 Among its claims, LPL alleges that Defendants have induced other parties,  
 5 including the party to whom the instant Subpoena was served, to infringe LPL's  
 6 patents.<sup>1</sup>

7 On December 27, 2006, LPL served a third party subpoena on Hewlett-  
 8 Packard Company. On February 13 and 14, 2007, LPL served approximately 23  
 9 other third party subpoenas ("Subpoenas") on various distributors, retailers, and  
 10 purchasers of Defendants' products in the United States. The Subpoenas were  
 11 issued based on LPL's understanding that these parties, who have current or former  
 12 business relationships with Tatung and ViewSonic, have documents that are  
 13 relevant to the instant action, including but not limited to, documents related to  
 14 purchase and sale of the infringing products in the United States, documents  
 15 relating to Defendants' efforts to market the infringing products in the United  
 16 States, and other important discovery concerning infringement, inducement,

17  
 18  
 19 <sup>1</sup> "A person induces infringement under § 271(b) by actively and knowingly aiding  
 20 and abetting another's direct infringement." *C. R. Bard, Inc. v. Advanced*  
 21 *Cardiovascular Sys., Inc.*, 911 F.2d 670, 675 (Fed. Cir. 1990). If the defendant has  
 22 knowledge of the patent, then upon a showing that defendant "had intent to induce  
 23 the specific acts constituting infringement, intent additionally to cause an  
 24 infringement can be presumed." *MEMC Elec. Materials, Inc. v. Mitsubishi*  
 25 *Materials Silicon Corp.*, 420 F.3d 1369, 1379 (Fed. Cir. 2005). A jury could  
 26 conclude that e-mails between a foreign defendant and a U.S. company "represent  
 27 product support" showing that the defendant was aware of potentially infringing  
 28 activities in the U.S. by the U.S. company and that the defendant "intended to  
 encourage those activities." *Id.* at 1379-80. See also *Minnesota Mining & Mfg. Co.*  
*v. Chemque, Inc.*, 303 F.3d 1294, 1305 (Fed. Cir. 2002) (evidence did not support  
 finding of no inducement where defendant was aware of patents and supplied  
 infringing products to customers "with instructions on how they were to be used,  
 which, when followed, would lead to infringement."); *Crystal Semiconductor*  
*Corp. v. Tritech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1351 (Fed. Cir. 2001)  
 (defendant's acts in connection with selling infringing audio chips, manufactured in  
 Singapore and sold to customer that resold to the U.S. PC market, constituted active  
 inducement).



1 damages, and other issues.<sup>2</sup> While a small handful of these third parties were  
 2 served with subpoenas during the jurisdictional phase of this case, the new  
 3 subpoenas are broader in several respects. First, the jurisdictional subpoenas did  
 4 not seek documents related to ViewSonic, which are sought in the present  
 5 Subpoenas. Second, the jurisdictional subpoenas were limited in most of their  
 6 categories to sales of products in Delaware, rather than throughout the United  
 7 States. In addition, the Subpoenas include three categories that did not appear at all  
 8 in the jurisdictional subpoenas. See Ex. 1, paragraphs 1, 2, and 8 in Attachment B.  
 9 Moreover, and perhaps most importantly, some of the parties that received both  
 10 subpoenas produced very few, if any, documents in response to the jurisdictional  
 11 subpoenas, and likely have additional responsive documents created since the first  
 12 subpoena was served.

13 Based on information available to LPL and LPL's belief, the third parties are  
 14 likely to have information showing that the Defendants have imported, sold, and  
 15 used their products in the United States, activities which infringe upon LPL's U.S.  
 16 patents and which support LPL's claims of direct infringement or inducement of  
 17 infringement. Thus, the third parties are likely to have documents pertaining to  
 18 communications, business coordination efforts, contracts or other agreements  
 19 between itself and the Defendants pertaining to Defendants' products and sales of  
 20 those products in the United States. The employees of the third parties are likely to  
 21 have knowledge of the manner in which the third party conducted business with the  
 22 Defendants and their customers in the United States. The employees of the third  
 23 parties are also likely to have knowledge of the methods and practices and any

24  
 25 <sup>2</sup> LPL has also sought the same information and documents, unsuccessfully, from  
 26 the Defendants. Defendants have produced some - but certainly not all - discovery  
 27 that LPL seeks. Notably, much of Defendants' production is subject to objections  
 28 and limitations that LPL disputes and which are the subject of related discovery  
 motions already pending before the Special Discovery Master in the Main Case in  
 the District of Delaware, as described more fully below.

1 coordination efforts related to the third parties' acquisition of infringing LCD  
 2 components from the Defendants. All of this information will assist LPL in  
 3 evaluating its patent infringement and inducement claims against the Defendants  
 4 and will enable LPL to verify whether the Defendants' own document productions  
 5 and deposition testimony have been complete and accurate. *See generally MEMC*  
 6 *Elec. Materials, Inc., v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369, 1379-  
 7 80 (Fed. Cir. 2005) (discussing factors evidencing inducement to infringe on  
 8 patents).

9 In addition, the Subpoenas requested that all documents be produced by  
 10 March 5, 2007, and that depositions occur between March 12 and March 27, 2007,  
 11 consistent with the March 30 deadline for third party discovery in this case. LPL  
 12 provided notice and copies of the Subpoenas to the Defendants prior to the service  
 13 of the Subpoenas. During a telephone conference on January 30, 2007, Tatung  
 14 indicated for the first time that it intended to file a motion for protective order with  
 15 respect to the Subpoena directed to Hewlett-Packard, but Tatung never did so.<sup>3</sup>  
 16 More than one month later, on March 5, Tatung again threatened to file additional  
 17 motions for protective orders with respect to the later served 23 Subpoenas. In  
 18 addition, even though Tatung had received the second batch of Subpoenas nearly  
 19 three weeks earlier, Tatung indicated that some or all of such motions would be  
 20 made on an *ex parte* basis because of the upcoming return dates on the Subpoenas,  
 21 which incidentally was that same day. (See Ex. 2, Emails between V. Ho and C.

22  
 23 <sup>3</sup> To date, Hewlett-Packard has produced more than 5000 pages of relevant,  
 24 responsive documents. Hewlett-Packard's agreement to produce and subsequent  
 25 production belies Tatung's argument that the Subpoenas are burdensome to the  
 26 third parties, particularly because the majority of the third parties are smaller  
 27 entities with far fewer responsive documents. Moreover, Hewlett-Packard  
 28 produced many "Process Management Plans," documents that LPL asserts are  
 essential to its infringement claims. Incredibly, Tatung denied the existence of such  
 documents and refused to produce them in response to numerous requests from  
 LPL. Tatung's failure to produce these documents underscores how critical it is for  
 LPL to obtain the discovery that is being sought from the third parties.

1 Connor (Mar. 5-7, 2007).) Tatung claimed to have standing to raise any such  
 2 objections on behalf of the third parties because it claimed that the Subpoenas  
 3 pertained to Tatung's still unresolved objections to the scope of discovery in the  
 4 Main Case. Tatung never explained why it had waited several weeks before raising  
 5 its objections, but merely stated that it intended to file its motions on an *ex parte*  
 6 basis. *See id.* In an exchange of emails, LPL strenuously objected to Tatung's  
 7 position that it could file *ex parte* motions on any issue in the case, including any  
 8 issues related to the third party subpoenas served by LPL. *See id.* In addition, LPL  
 9 further reiterated its position that Tatung had no standing to raise objections to the  
 10 Subpoenas, principally, because Tatung has never proved why any documents now  
 11 in the custody of third parties are confidential, trade secrets, or otherwise shielded  
 12 from discovery. *See id.*

13 Nonetheless, Tatung filed the instant Motions, along with approximately 18  
 14 other Motions related to the various Subpoenas served by LPL. Tatung filed the  
 15 Motions for Protective Order without regard for the fact that several of the third  
 16 parties had either already produced the requested documents or agreed to produce  
 17 the requested documents with objection. Indeed, several third parties have agreed  
 18 to produce the requested documents even after learning that Tatung had filed  
 19 Motions related to the Subpoenas, which further undermines Tatung's arguments in  
 20 its Motion. Nonetheless, due to Tatung's interference and improper motions, there  
 21 are also certain third parties who have now refused to produce the requested  
 22 discovery after they had already agreed to comply with the subpoenas. *See, e.g.*  
 23 Ex. 3.

## 24 II. ARGUMENT

25 Under Rule 26(c), Tatung bears the burden of establishing that a protective  
 26 order should be granted. *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d  
 27 Cir. 1986). To meet its burden, "the party seeking the protective order must show  
 28 good cause by demonstrating a particular need for protection. Broad allegations of

harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *See id*; *United States v. Garrett*, 571 F.2d 1323, 1326, n. 3 (5th Cir. 1978) (requiring “a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements”); *General Dynamics Corp. v. Selb Mfg. Corp.*, 481 F.2d 1204, 1212 (8th Cir.1973), cert. denied, 414 U.S. 1162, 94 S.Ct. 926, 39 L.Ed.2d 116 (1974); 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2035 (1970 & Supp.1985). Moreover, it is clear that the harm described by the movant must be significant, not a mere trifle. *See, e.g., Joy v. North*, 692 F.2d 880, 894 (2d Cir.1982) (refusing protective order where proponent’s only argument in its favor was the broad allegations that the disclosure of certain information would “injure the bank in the industry and local community”), cert. denied sub nom. *Citytrust v. Joy*, 460 U.S. 1051, 103 S.Ct. 1498, 75 L.Ed.2d 930 (1983). Tatung has failed to meet its high burden with respect to this Motion.

**A. The Court Should Exercise Its Discretion to Transfer Tatung’s Motion to the District of Delaware**

The Court has the authority to transfer Defendants’ Motions for Protective Order to the District of Delaware. *See Devlin v. Transportation Communications International Union*, 2000 WL 249286, \*1 (S.D.N.Y. 2000) (stating that there is ample authority for the court from which a subpoena issues to transfer any motions relating to that subpoena back to the court where the main case is pending); *Digital Equipment Corp.*, 949 F.2d 228, 231 (8th Cir. 1991) (holding that while the court initially has exclusive jurisdiction to rule on the objections, it may in its discretion remit the matter to the court in which the action is pending).<sup>4</sup>

<sup>4</sup> *See also* Fed.R.Civ.P. 26(c), advisory committee’s note. The Advisory Committee’s Note to Rule 26(c) (Protective Orders) explains: “The subdivision recognizes the power of the court in the district where a deposition is being taken to make protective orders.... The court in the district where the deposition is being

(footnote continued on next page)

1 As explained above, all 23 motions filed by LPL are nearly identical. Yet, by  
 2 having the Motions heard in 15 or more different jurisdictions, the parties risk that  
 3 inconsistent opinions will be rendered. Moreover, the hearings on all of these  
 4 motions will be very time consuming and will further interfere with LPL's attempts  
 5 to finalize discovery in the Main Case, in which depositions of Tatung's witnesses  
 6 are currently being taken. In light of these issues, and the other related discovery  
 7 issues currently pending in the Main Case as described below, a decision in this  
 8 Court would have to be made in a vacuum, without the benefit of entering a global  
 9 decision related to all 23 nearly identical motions. Indeed, this Court should not  
 10 attempt to decide these issues in a vacuum without the benefit of knowing the  
 11 history of complex discovery disputes and facts at issue between the parties in the  
 12 Main Case. Thus, for the reasons cited above, LPL requests that the Court formally  
 13 transfer this dispute back to the District of Delaware, the court where the Main Case  
 14 is pending, so that all 23 motions and oppositions can be heard en masse.

15 **B. Tatung Lacks Standing to Challenge the Subpoenas**

16 Tatung does not have standing to raise any objections to LPL's Rule 45  
 17 subpoenas. Rule 45(c) provides protection to persons "subject to subpoenas."  
 18 Indeed, "[u]nless a party to an action can make claim to some personal right or  
 19 privilege in respect to the subject matter of a subpoena duces tecum directed to a  
 20 nonparty witness, the party to the action has no right to relief under Rule 45(b) or  
 21 30(b)." *Dart Industries, Inc. v. Liquid Nitrogen Processing*, 50 F.R.D. 286, 291 (D.  
 22 Del. 1970); *see Ponsford v. United States*, 771 F.2d 1305, 1308 (9th Cir. 1985)  
 23 (denying motion to quash for lack of standing); *Nova Products, Inc. v. Kisma*  
 24 *Video, Inc.*, 220 F.R.D. 238, 241 (S.D.N.Y. 2004) (denying motion to quash  
 25 because no showing of personal right or privilege); *Oliver B. Cannon and Son, Inc.*

26 *(footnote continued from previous page)*

27 taken may, and frequently will, remit the deponent or party to the court where the  
 28 action is pending."



1 *v. Fidelity and Cas. Co. of New York*, 519 F. Supp. 668, 680 (D. Del. 1981)  
 2 (denying motion to quash because movant failed to prove documents sought were  
 3 privileged). Tatung attempts to distinguish the *Dart* decision on two grounds.  
 4 First, Tatung argues that the motion in *Dart* was premised on Rule 45(c), rather  
 5 than Rule 26(c), which was relied upon by Tatung. However, the standards for  
 6 protective orders under both rules is the same. *See* Advisory Committee Notes to  
 7 the 1970 Amendment to Rule 45 (the "scope of discovery through a subpoena is the  
 8 same as that applicable to Rule 34 and other discovery rules.") Thus, Rule 45  
 9 clearly incorporates the standards set forth in Rule 26.

10 Tatung also attempts to distinguish *Dart* on the ground that the moving party  
 11 in *Dart* did not assert any personal privilege in the requested documents. Similarly,  
 12 however, in this case, while Tatung has stated, in a conclusory manner, that it has a  
 13 personal stake in the documents to be produced, Tatung has failed to provide any  
 14 particularized facts or evidence to support its conclusions. Such statements are  
 15 insufficient for Tatung to meet its burden in establishing that it is entitled to a  
 16 Protective Order. *Cipollone*, 785 F.2d at 1121. Namely, Tatung has failed to  
 17 explain why it would be burdensome to Tatung for a third party to produce the  
 18 requested information. In addition, while Tatung argues that its alleged confidential  
 19 documents are stored in a secure facility, Tatung fails to explain how it can assert  
 20 the alleged confidentiality of such information that it has voluntarily disclosed to its  
 21 customers, particularly where Tatung evidently has no confidentiality agreement in  
 22 place to protect the information. In addition, Tatung fails to explain why the  
 23 Protective Order entered in the Main Case, which governs the use and disclosure of  
 24 confidential information, does not adequately protect the information to be  
 25 produced by the third parties. Indeed, by Tatung's own admission, it has already  
 26 produced documents designated as "Highly Sensitive Confidential" in the Main  
 27 Case under the Protective Order. Yet, Tatung's arguments suggest that such a  
 28 course of action is not good enough for the third parties, even though the Protective

1 Order clearly applies to non-parties as well. Ex. 4. Tatung's argument that LPL  
 2 seeks such information "to obtain a competitive advantage over them" is  
 3 unfounded, inappropriate, and frankly, would not even be possible since documents  
 4 marked "Highly Sensitive Confidential" cannot even be disclosed to LPL and can  
 5 only be seen by outside counsel. See Ex. 4 at ¶ 2.2. LPL strongly disputes  
 6 Tatung's contention that LPL has ever violated a Protective Order in this or any  
 7 other cases. Moreover, Tatung has no evidence to support its contention that LPL  
 8 may be in violation of the patent prosecution bar, and Tatung's accusations on this  
 9 point are misplaced and offensive.

10 Here, Tatung has not identified any particular harm that would necessitate a  
 11 Protective Order. Moreover, Tatung has no basis to object to the information  
 12 sought by LPL's subpoenas and, thus, does not have standing to move for a  
 13 Protective Order with respect to any of LPL's subpoenas. As such, Tatung has  
 14 evidently filed these motions solely to delay and impede LPL's discovery efforts.

15 **C. Tatung's Motion Is Nothing More Than An Attempt to Interfere**  
 16 **With LPL's Legitimate Third Party Discovery**

17 Tatung's interference with valid third party discovery is inappropriate and is  
 18 nothing more than an attempt to delay the third party discovery until after the  
 19 March 30, 2007 discovery deadline. Indeed, on March 7, 2007, LPL received a  
 20 telephone message from Sensormatic, who had previously agreed to produce the  
 21 documents requested in the Subpoena. In that message, Sensormatic stated that  
 22 Tatung told Sensormatic that it planned to move for a protective order.  
 23 Sensormatic further expressed concern about being in the middle of the dispute  
 24 between the parties regarding the Subpoena. As a result, Sensormatic has not  
 25 produced documents yet despite its earlier agreement to do so. On March 8, 2007,  
 26 LPL received correspondence from Tyco Electronics Corp. ("Tyco"), who LPL had  
 27 also served with a Subpoena. (See Ex. 3.) Prior to that date, Tyco had also agreed  
 28 to produce documents in response to the Subpoena. In the correspondence on

1 March 8, however, Tyco stated that, "I understand that [Tatung] intends to file a  
 2 motion for protective order with regard to this subpoena. In light of this, Tyco will  
 3 await the disposition of this motion by the court before providing any material in  
 4 response to the subpoena." (Id.) These communications clearly show that Tatung's  
 5 motions are delaying LPL's legitimate discovery in this action. Because Tatung  
 6 waited until now to file motions pertaining to subpoenas served almost one month  
 7 ago, it is also clear that Tatung is using its motions as a way to prevent LPL from  
 8 obtaining third party discovery prior to the March 30 deadline.

9 Tatung's decision to wait almost one month to file its motions for protective  
 10 order and Tatung's disruptive communications with third parties are tactics that  
 11 Tatung has used before in the Main Case and in at least one prior patent  
 12 infringement case. In the Main Case, during the jurisdictional discovery phase,  
 13 "Tatung failed to appear for depositions on multiple occasions, failed to produce  
 14 witnesses prepared to testify on noticed and relevant topics, and failed to respond to  
 15 interrogatories and requests for production of documents," which forced LPL to  
 16 waste its resources just to prove that Tatung's products are sold in Delaware. (Ex.  
 17 5, Report & Recomms. at 9 (Aug. 16, 2005) (imposing sanctions on Tatung).)  
 18 Ultimately, after the Special Discovery Master in the Main Case reviewed Tatung's  
 19 pattern of delay and discovery abuse, Tatung withdrew its jurisdictional defense.  
 20 (*See generally id.*)

21 Tatung has also taken steps to disrupt third party discovery in at least one  
 22 other case. *See Safer Display Technology, Ltd. v. Tatung Co.*, 227 F.R.D. 435  
 23 (E.D. Va. 2004) (copy attached hereto). In that case, represented by the same  
 24 counsel as in the Main Case, Tatung engaged in similar delays before it finally  
 25 withdrew its jurisdictional defense. *See Safer Display*, 227 F.R.D. at 437. Notably,  
 26 in *Safer Display*, Tatung worked diligently to impede third party discovery by  
 27 contacting and attempting to dissuade third parties from producing discovery, (*see*



1 Ex. 6 at 9-10), and filing motions for protective orders for which Tatung lacked  
2 standing, (*see id.* at 10-11).

3 As Tatung is aware, all of these emergency hearings have been scheduled to  
4 occur simultaneously with depositions of Tatung's witnesses. Because LPL's lead  
5 trial counsel are busy taking and defending depositions this week, it appears that  
6 Tatung strategically filed these requests for expedited hearing in an attempt to  
7 prevent LPL from obtaining significant and relevant information it needs from the  
8 third parties or to divert LPL's focus from the Tatung depositions. Tatung's  
9 continuing pattern of dilatory tactics and improper interference with LPL's  
10 discovery efforts should not be allowed to continue.

11 **D. LPL Has Been Unsuccessful In Obtaining the Discovery It Seeks**  
12 **From the Defendants, Who Have Refused to Produce the**  
13 **Requested Documents**

14 LPL needs the discovery that it seeks from the third parties because the fact  
15 discovery in the Main Case will close on March 30, 2007 and because Tatung has  
16 not cooperated with LPL's discovery efforts. Indeed, Tatung misrepresents the  
17 volume and the sufficiency of its document production to date. Although LPL's  
18 discovery requests were served on November 29, 2005, Tatung has refused to fully  
19 comply with those requests by, among other things, imposing unreasonable  
20 limitations and conditions on their production. LPL filed motions to compel in the  
21 Main Case that addressed issues common to all Defendants in the Main Case in  
22 September, October, November, and December 2006 and in January, February, and  
23 March 2007. Most of these issues have not yet been resolved and many of those  
24 unresolved issues relate directly to Tatung's instant Motion for Protective Order.  
25 For instance, although Tatung has identified over 300 potentially infringing  
26 products, it only produced about 60 technical drawings and then claimed, without  
27 explaining their calculations, that this fractional production covered as much as  
28 96% of their products. Additionally, after telling LPL for months that it had

1 produced all technical documents, Tatung has only recently revealed, but not yet  
2 fully produced, additional categories of critically relevant technical drawings.  
3 Tatung has informed LPL that it will complete its supplemental production in April,  
4 which is well after the March 30 deadline for third party discovery.

5 Tatung argues that the third parties should not be required to produce  
6 documents, in part, because Tatung has objected to the scope of LPL's requests.  
7 Tatung correctly notes that the Special Discovery Master in the Main Case has not  
8 yet ruled on these issues. This is precisely the reason that LPL seeks discovery  
9 from the third parties. Tatung has refused to produce relevant documents and the  
10 Special Discovery Master has not ruled on Tatung's objections or on LPL's  
11 motions to compel that production. Notably, the subpoena itself is not limited to  
12 documents relating to Tatung in the possession of the third party as the subpoena  
13 also seeks documents relating to ViewSonic, another defendant in the Main case  
14 who has not objected to these subpoenas. All fact discovery, including third party  
15 discovery, in the Main Case closes on March 30, 2007. After that date, LPL will  
16 not be able to seek further discovery from any third party. Thus, in order to  
17 compile all relevant evidence and properly prepare its case for trial, LPL needs  
18 discovery from the third parties so that it can test the sufficiency and completeness  
19 of Tatung's own production.

20 There have been no rulings in the Main Case that would limit LPL's ability  
21 to obtain the scope of discovery that it seeks from the third parties. Indeed,  
22 contrary to Tatung's statement that the Special Discovery Master's "impending  
23 ruling" will be favorable to Tatung, neither party can predict in whose favor the  
24 Special Discovery Master will rule. Although Tatung resists LPL's discovery in  
25 the Main Case, that resistance does not, by itself, erect roadblocks to LPL's  
26 discovery from third parties. LPL properly seeks discovery from Tatung about all  
27 potentially infringing products because only Tatung can provide LPL with  
28

1 information that would identify infringing products out of Tatung's total of over  
2 850 different products.

3 E. The Scope of the Subpoena is Reasonable, And In Any Event,  
4 Tatung's Objections are Misplaced

5 In its Motion, Tatung argues that any discovery should be limited to the  
6 accused products. This, however, is precisely why LPL issued the Subpoenas. In  
7 its Complaint, LPL identified to Tatung an example of a product that LPL alleged  
8 to infringe the Patents-in-Suit. However, because Tatung makes hundreds of  
9 products, most of which are sold under brand names belonging to third parties, LPL  
10 has no way to know, without Tatung's assistance, which of Tatung's hundreds of  
11 products use infringing technology. LPL's attempts to obtain information  
12 regarding Defendants' products has been ongoing since November 2005. However,  
13 the Defendants have objected to producing documents that would enable LPL to  
14 identify those products, and continue to resist LPL's efforts to this day. In fact,  
15 during a hearing on March 12, 2007, Tatung conceded that it has not produced all  
16 such documents and that it would produce additional documents in April 2007,  
17 after the deadline for the close of third party discovery.

18 In light of the Delaware Court's Scheduling Order, requiring that third party  
19 discovery be completed by March 30, Tatung's efforts to limit the scope of LPL's  
20 subpoena to products that have been accused of infringement will artificially  
21 narrow the scope of the subpoena to products that are currently accused, even  
22 though that list will likely expand in April, after LPL finally receives Tatung's  
23 supplemental document production.

24 In addition, Tatung's objections to the scope of the Subpoena are misplaced.  
25 Specifically, objections based on burden or scope of a Subpoena should be made by  
26 the party upon whom the Subpoena is served. As the burden will not be borne by  
27 Tatung, Tatung does not have standing to raise that issue. To the extent that Tatung  
28 believes that the documents produced by third parties are not relevant to the

1 litigation, or exceed the bounds of admissible evidence, Tatung can raise those  
 2 arguments in advance of trial. *See Cook v. Rockwell Intern. Corp.*, 935 F.Supp.  
 3 1452, 1465 (D.Colo. 1996) ("Defendants had no standing to object to the breadth of  
 4 the order [with respect to third party subpoena] but were restricted to appropriate  
 5 objections as to relevance and admissibility before trial.") Notably, Tatung filed  
 6 the Motions for Protective Order without regard for the fact that several of the third  
 7 parties had either already produced the requested documents or agreed to produce  
 8 the requested documents with objection. As the party to whom the Subpoena was  
 9 served has not filed a Motion for Protective Order with respect to the breadth of the  
 10 Subpoena, Tatung's objection on that basis should be denied.

### 11 III. CONCLUSION

12 For the foregoing reasons, LPL requests that the Court exercise its discretion  
 13 to transfer the instant motion to the United States District Court for the District of  
 14 Delaware. In the alternative, LPL requests that the Court deny the Motion and  
 15 allow LPL to proceed with necessary third party discovery.

16  
 17 Dated: March 14, 2007

Respectfully submitted,

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